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## EXTRAORDINARY

### PART II—Section 3

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#### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 27th December 1957/Pausa 6, 1879 Saka*

**S.R.O.74.**—Whereas the election of Shri Gajadhar Somani, son of Shri Hazari Mal Somani, resident of Shriniwas House, Wandley Road, Bombay No. 1, as a member of the House of the People from the Dausa Parliamentary Constituency of that House, was called in question by election petitions duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by (i) Sarvashri Girraj Prashad and Madan Lal and (ii) Shri Udaichand;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petitions, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petitions to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, JAIPUR

PRESENT:— Shri C. Jacob.

#### ELECTION PETITION No. 372 OF 1957.

1. Shri Girraj Prashad, son of Ram Prasad, by caste Brahmin, resident of Bandikui, Tehsil Baswa, District Jaipur.
2. Shri Madan Lal, son of Suwa Lal, by caste Mahajan, resident of Barjal Kalan, Tehsil Baswa, District Jaipur—*Petitioners.*

*Vs.*

1. Shri Gajadhar Somani, son of Shri Hazari Mal Somani, resident of Shriniwas House, Wandley Road, Bombay No. 1—*Respondent.*

#### ELECTION PETITION No. 382 OF 1957.

Shri Udaichand, son of Shri Hira Lal, resident of Kuntalwas, Tehsil Lalsot, District Jaipur—*Petitioner.*

*Vs.*

Shri Gajadhar Somani, M.P., resident of Shriniwas House, Baird 'B' Road, Bombay Fort No. 1—*Respondent.*

Shri R. C. Sharma, Advocate—for the petitioners.

Shri C. L. Agarwal, Advocate—for the respondent.

## JUDGMENT

These are two connected election petitions calling in question the validity of the election of respondent Gajadhar Somani to the House of People from Dausa constituency. Since the only ground taken up in both the petitions is about the improper rejection of the nomination of a candidate they have been consolidated.

The Returning Officer rejected the nomination paper of one Shri Narain on the ground that in column No. 2 the name of the constituency where the proposer was a voter had not been given. According to the petitioners the nomination paper of Shri Narain was improperly rejected because the identification of the proposer was not in dispute and in any case the mistake was not of a substantial character. The respondent on the other hand has pleaded that not only the nomination paper of Shri Narain was defective as regards the particulars about the proposer but it also did not disclose the place and the constituency where the candidate was enrolled as a voter and as such the nomination paper was liable to be rejected on that ground also.

The only issues arising for decision in these cases are:—

1. Was the nomination of Shri Narain improperly rejected as alleged in para. 5 of the petition?
2. Are the petitioners entitled to the relief claimed?

*Issue No. 1:—*

The nomination paper of Shri Narain which is an admitted document shows that in column No. 2 of the portion to be filled in by the proposer, the only entry is 'Serial No. 9, Part 38', and the order of the Returning Officer is as under:

"I examined the nomination paper filed by Shri Sri Narain from Dausa House of the People constituency.

The name of the constituency where the proposer is a voter has not been given against column No. 2 of the nomination Form. It is, therefore, impossible to satisfy the entries in terms of sub-section 4 of Section 33 of the Representation of the People Act, 1951.

Hence the nomination paper rejected."

Now it is to be seen whether the Returning Officer had improperly rejected this nomination paper. Sub-section (4) of Section 33 of the Representation of the People Act, 1951 lays down that on the presentation of a nomination paper, the Returning Officer shall satisfy that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, further lays down that every nomination paper presented under sub-section (1) of Section 33 of the Representation of the People Act shall be completed in such one of the forms 2A to 2F as may be appropriated. In the present case the appropriate form is 2A. At the foot of this form there are clear directions as to what particulars should be given in column Nos. 2 and 5. According to these directions the following particulars should be given in column Nos. 2 and 5, regarding the proposer and the candidate:

- (i) the name of the parliamentary constituency;
- (ii) the name of the component assembly of electoral college constituency in the electoral rolls of which the name of the proposer or the candidate as the case may be, has been entered;
- (iii) the serial number of the part of the electoral roll in which such entry occurs; and
- (iv) the serial number of the entry in that part.

Thus it is the duty of the proposer to give the name of the parliamentary constituency as well as the assembly constituency in which he and the candidate were enrolled as voters. Since the nomination paper of Sri Narain neither mentions the name of the parliamentary constituency nor specify the assembly constituency to which the serial number given therein relates, it was clearly defective. In the absence of the names of parliamentary and assembly constituencies it was not possible for the Returning Officer to satisfy himself that the

names and electoral roll numbers of the candidate and his proposer in the nomination paper were the same as those entered in the electoral roll as required by sub-section 4 of Section 33 of the Representation of the People Act. This defect in the nomination paper also cannot be regarded to be of a non-substantial character. The omission to give the name of the constituency and other particulars as required by rule (4) is equivalent to give no particulars at all. This is not a case of any clerical or technical error. Since the proposer had failed to comply with the mandatory provisions of Section 33 of the Representation of the People Act read with rule 4 of the Rules the nomination paper of Sri Narain cannot be said to be improperly rejected and it was also liable to be rejected for omission to specify the parliamentary and assembly constituency in which Sri Narain was enrolled as a voter.

*Issue No. 2:—*

In view of my finding on Issue No. 1 the petitioner is not entitled to the relief claimed.

Both the petitions are, therefore, dismissed. The petitioners in each case shall pay Rs. 100/- as costs to the respondent.

(Sd.) C. JACOB,

Election Tribunal, Jaipur.

Pronounced in the open court, this 5th day of December, 1957.

(Sd.) C. JACOB,

Election Tribunal, Jaipur.

AGARWAL.

[No. 82/372/382/57/15743.]

By Order,

DIN DAYAL,

for Secy. to the Election Commission, India.

